

LARRY W. FERGUSON

IBLA 83-843

Decided May 31, 1984

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. NM-46014.

Affirmed in part; set aside in part and remanded.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

Reinstatement of a terminated oil and gas lease pursuant to 30 U.S.C. § 188(c) (1982) requires a showing by the lessee that the late rental payment was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the due date is not reasonable diligence. Neither reliance on a courtesy notice nor the complexity of the lessee's business affairs will justify a late payment.

2. Oil and Gas Lease: Reinstatement -- Oil and Gas Leases: Termination

Where a lessee files a petition for reinstatement of a terminated oil and gas lease in response to notification of his rights to petition for reinstatement under 30 U.S.C. § 188(c) (1982) and 30 U.S.C. § 188(d) and BLM denies reinstatement only on the basis of noncompliance with the former statutory provision, the case will be remanded to BLM for consideration of reinstatement under the latter provision.

APPEARANCES: Larry W. Ferguson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Larry W. Ferguson was appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 29, 1983, denying his petition for reinstatement of noncompetitive oil and gas lease NM-46014.

Effective May 1, 1982, BLM issued a noncompetitive oil and gas lease to appellant for 2,060.85 acres of land situated in Socorro County, New Mexico, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226

(1982). By notice dated June 10, 1983, BLM informed appellant that his oil and gas lease had terminated by operation of law effective May 2, 1983, ^{1/} the lease anniversary date, for "failure to pay rental in a timely manner." The record indicates that appellant's rental payment was received by BLM on May 16, 1983. In its June 1983 notice, BLM outlined appellant's "right to petition for reinstatement of the lease, pursuant to 30 U.S.C. 188(c), Class I reinstatements, and 30 U.S.C. 188(d) and (e), Class II reinstatements." BLM stated, after summarizing the various requirements for reinstatement, that: "If all these requirements are met, your lease may be reinstated with the amended terms and conditions, effective on the date of termination."

On June 27, 1983, appellant filed a petition for reinstatement of oil and gas lease NM-46014. The petition did not specify whether reinstatement was sought under 30 U.S.C. § 188(c) or (d). Appellant asserted that he had mailed the rental payment within 20 days of the lease anniversary date and was late in doing so because he never received notice that the payment was due and was immersed in a "large commercial construction project," which was under a deadline. In its June 1983 decision, BLM denied appellant's petition for reinstatement because he had "not satisfactorily complied" with the requirements of the "Act of May 12, 1970," P.L. 91-245, 84 Stat. 206 (1970), and "43 CFR 3108.2-1(c)."

In his statement of reasons for appeal, appellant contends that his lease should not have terminated because BLM "can accept the lease payment if the payment arrives within twenty days of the due date" and that his rental payment was only 12 days late. Appellant further states that the annual rental was "only paid twelve days late because the payment notice from BLM was lost."

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that an oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law upon failure to pay the annual rental on or before the anniversary date of the lease. See also 43 CFR 3108.2-1(a) (1982). Because appellant's rental was not received on May 2, 1983, the due date, oil and gas lease NM-46014 terminated automatically.

The Act of October 15, 1962, P.L. 87-822, 76 Stat. 943 (1962), and the Act of May 12, 1970, supra, the latter cited by BLM, amended section 31 of the Mineral Leasing Act, supra, to provide for the reinstatement of terminated oil and gas leases under certain circumstances. In particular, the statute requires that the rental be paid or tendered within 20 days after the lease anniversary date that it be shown that failure to pay on time was either justifiable or not due to lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1982); 43 CFR 3108.2-1(c) (1982).

^{1/} The lease anniversary date was May 1, 1983, but because it fell on a Sunday, appellant was entitled to make the rental payment on the next working day, May 2. However, the effective date of termination was still May 1.

In order to show that a late payment was not due to a lack of reasonable diligence, a lessee must ordinarily show that payment was mailed sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2) (1982). Mailing the rental payment after the due date does not constitute reasonable diligence. 2/ O. L. Foster, 72 IBLA 367 (1983).

However, failure to pay on time may be considered justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his actions in paying the rental fee. Joanne F. Bechtel, 76 IBLA 1 (1983), and cases cited therein. In his petition for reinstatement, appellant argued that his late payment was caused by the fact that he was involved in a large construction project. While we presume that appellant was preoccupied with this project at or near the lease anniversary date, May 1, 1983, we cannot conclude that such circumstances were outside of his control. Rather, such circumstances were eminently within his control. A late payment will not be considered justified where a lessee neglects to order his business affairs in such a fashion that outstanding obligations, including the rental payment involved herein, are met. We have long held that the complexities of a corporate lessee's business operations which contribute to the failure to pay the annual rental on time will not justify a late payment. Dome Petroleum Corp., 59 IBLA 370, 377, 88 I.D. 1012, 1016 (1981), and cases cited therein. The same applies in the case of an individual lessee. Id.

Appellant also argues that the late payment was caused by his failure to receive notice of the payment due. It is well established that reliance upon receipt of a courtesy notice can neither prevent an oil and gas lease from terminating by operation of law nor serve to justify a failure to timely pay the lease rental. E.g., Harry C. Peterson, 75 IBLA 195, 197 (1983).

Finally, appellant argues that BLM can accept a late rental payment if it is received within 20 days of the lease anniversary date. This is true. However, it does not prevent an oil and gas lease from automatically terminating for failure to pay on time or permit reinstatement of the lease in accordance with 30 U.S.C. § 188(c) (1982). Payment within the 20-day time period is simply an essential prerequisite to reinstatement under 30 U.S.C. § 188(c), in addition to compliance with either of the two statutory grounds for reinstatement. R. K. O'Connell, 76 IBLA 376 (1983).

2/ Effective Aug. 22, 1983, the Department amended its regulations governing reinstatement to provide that where a rental payment is mailed "on or before the lease anniversary date and is received in the proper BLM office no later than 20 days after such anniversary date [it] shall be considered as timely filed." 43 CFR 3108.2-1(a) (48 FR 33673 (July 22, 1983)). In effect, the failure to pay on time is deemed not due to a lack of reasonable diligence; and, thus, the lease will be reinstated under 30 U.S.C. § 188(c) (1982). 48 FR 33655 (July 22, 1983). In this case, however, appellant's rental payment was mailed after the anniversary date, and, thus, he cannot take advantage of the amended regulation.

[2] Nevertheless, section 31 of the Mineral Leasing Act, supra, was recently amended by section 401 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), P.L. 97-451, 96 Stat. 2447 (1983), codified at 30 U.S.C. § 188(d) through (j) (1982), to provide an additional opportunity to reinstate a lease terminated by operation of law. In particular, section 401 of FOGRMA, supra, provides that the Secretary may reinstate an oil and gas lease where it is demonstrated that the failure to pay on time was "inadvertent." 30 U.S.C. § 188(d)(1). Reinstatement under section 401 of FOGRMA, supra, is subject to certain conditions, set forth at 30 U.S.C. § 188(d)(2) and (e). In its lease termination notice, BLM advised appellant that he could pursue reinstatement of his lease under 30 U.S.C. § 188(c) and 30 U.S.C. § 188(d). However, in its decision denying reinstatement, BLM did not explicitly consider whether oil and gas lease NM-46104 could be reinstated under 30 U.S.C. § 188(d). BLM may have concluded that appellant was not seeking reinstatement under that statutory provision. However, appellant made no reference to statutory authority in his petition and we cannot conclude that appellant was not seeking reinstatement under 30 U.S.C. § 188(c) and 30 U.S.C. § 188(d). Since the record indicates that BLM considered reinstatement only pursuant to 30 U.S.C. § 188(c), the June 1983 BLM decision must be set aside in part and the case remanded to BLM for review of the question of reinstatement under 30 U.S.C. § 188(d).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside in part and the case is remanded to BLM for further action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

